

1000664 [2010] RRTA 360 (7 May 2010)

DECISION RECORD

RRT CASE NUMBER:	1000664
DIAC REFERENCE(S):	CLF2009/123961
COUNTRY OF REFERENCE:	India
TRIBUNAL MEMBER:	Richard Derewlany
DATE:	7 May 2010
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of India, arrived in Australia [in] August 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] September 2009. The delegate decided to refuse to grant the visa [in] January 2010 and notified the applicant of the decision and his review rights by letter dated [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] February 2010 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
 - owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Protection visa application

20. The applicant stated in his protection visa application that he was married and that he had lived at an address in Hyderabad from March 1992 to August 2009. He stated he had completed 17 years education. In the application form the applicant claimed that politicians were trying to kill him because they think he might be seeking revenge for the fact that they killed his father. He claimed the police would not be able to protect him as they had not been able to protect a 'Prime Minister', or "Home Minister", or MLA.
21. The applicant submitted a brief written statement with the application in which he stated he was applying for protection because his father and uncle were killed by opposition politicians when he was 3 years old, and now he was a target because he was [Youth Official 1] in the Bharatiya Janata Party (BJP). He claimed they were trying to kill him and he had no support from the police because the ruling party was Congress. He had been attacked 5 times and came to Australia because it was not safe for him in India.

Departmental interview [in] December 2009

22. The information provided by the applicant at the Departmental interview is summarised as follows:

The applicant was a citizen of India and not of any other country. He did not have the right to reside in any other country. He is Hindu and belongs to the [name deleted: s.431(2)] 'community'.

His father and uncle were members of the Telugu Desam Party (TDP) and were killed in [year] when he was 3 years old. They were killed by relatives. His mother used to send him away from the village. He came to Hyderabad and studied and joined the BJP. He joined in 2004, and was a [Youth Official 1] for the [Suburb A] area. [Suburb A] is a part of Hyderabad. In relation to his father's killing, there was some dispute and the people involved in the killing had a background in the Congress Party. He never went back to his village because of this dispute. The people involved in his father's killing used to follow and harass him. They attacked him 4 times; the attacks occurred in Hyderabad. The reason for the attacks was also that he had a political background. He had gone to the police but the ruling Party is Congress and the police did not listen to him. On one occasion after an attack he had been in a coma for a month. He was trying to get supporting documents and FIR, but the police were not supporting the request and were asking for bribes.

The relatives involved in his father's death were from Congress; when Congress came into power in the State and the Central government they harassed him; this started from 2004. He had been attacked in the stomach, the eyes and the head. The police cannot provide security as they cannot even provide security for MLAs. He was aware that an MLA had been killed, so how can the police protect him. He has documents about his membership of BJP and was trying to obtain these.

The delegate asked if he could live elsewhere in India. He did not think so as the central government is Congress Party.

His father and uncle were killed because of their political involvement and because they were not a part of Congress. His mother lives at the same address that he gave as his address in India. He had no other immediate family. If he returns to India his opponents will attack him. They may want to get him because he is involved in the BJP and because he may be seen as a threat to them. He does not think he is a threat but they may think this.

23. The applicant provided further evidence to the Department including:
- A copy of his father's death certificate (details filled out in Telugu, and no details of cause of death included)
 - A copy of a BJP Hyderabad letter head showing the applicant's name and title of [Youth Official 1], the name of another person with title [Youth Official 2], and a third person with title [Youth Official 3].
 - A letter on BJP Hyderabad letterhead signed by [Mr A], [Official] BJP Andhra Pradesh, stating that the applicant had been appointed as [Youth Official 1] for the [Suburb A] zone. The letter is dated '[date]/6/2003'

Review application

24. The applicant appeared before the Tribunal [in] April 2010 to give evidence and present arguments. The applicant had provided to the Tribunal, prior to the hearing, copies of the documents he had submitted to the Department as listed above. At the hearing the applicant provided his Indian passport and the original BJP letter head and letter, as well as a further copy of his father's death certificate.
25. The Tribunal asked the applicant about his wife, as he had indicated in the application form that he was married, but had not provided any details of her. He stated her name was [name deleted: s.431(2)], and he had not included details because she was in India. He then stated they were actually separated but not yet divorced. They separated about 3 months prior to his travel to Australia. The Tribunal asked why he had not indicated he was separated, as the application form provided for this option; he stated he did not pay much notice to the question. He stated that after their marriage he and his wife lived at his address in [Suburb A]; she then went back to live with her parents.
26. The applicant and his family lived at [Suburb A] from 1992. His wife left because of the 'clashes' he had experienced. He had graduated from [University deleted: s.431(2)] in 2002, where he had done a [Bachelor's degree]. After this he had done some work for [employer deleted: s.431(2)] as a credit card application officer. He had done this work part time while studying. In response to a query by the Tribunal the applicant clarified that he actually

completed his studies in 2007. He worked after completing his degree, but it was not a permanent position, and this was why he did not provide details in his application. He also did some share trading for 7-8 months in 2008 and was not formally employed after this. He received some income from farming land that had been passed down from his father; the land was in [village deleted: s.431(2)] in Andhra Pradesh, where he was born.

27. The applicant stated he was seeking protection because his father had been a leader and active member of the TDP and had been killed by political opponents. Some of the family's relatives were involved; they were in the Congress Party and had tried to get his father to join Congress but he would not. They then decided he was 'in the way' and killed him in an attack with 'knives and sticks' The Tribunal asked for further details of the relatives involved. The applicant stated that some relatives, including [name deleted: s.431(2)], were in Congress, and they were in the group which killed his father. He stated they were distant relatives connected, for example, to his grandmother's brothers. His father was killed in his home village. The Tribunal asked if the matter was brought before the police and he stated it was and some persons had been detained, but they were not charged. He stated that a 'compromise' had been reached whereby cousins of his father 'gave some property'. The Tribunal asked for clarification and he stated there was a type of settlement in the case and after this the police did not proceed with it. He stated some 'big people' were involved. The applicant had tried to get documents relating to the case but the police said it was a [year deleted: s.431(2)] matter and they asked money to undertake a search. The Tribunal indicated that it appeared this might be an administrative fee for retrieving documents from archives, rather than a demand for a bribe. The applicant stated there should not be a fee as he had a right to the documents. He stated that he had been unable to obtain the First Information Report (FIR) from the police
28. The Tribunal asked why the applicant had been targeted by political opponents since 2004. He stated he joined the BJP in Hyderabad in 2004 and since then persons from opposing political parties, including the relatives involved in his father's death, had been trying to get him and to scare him and other people. They were involved in corruption and have attacked him. It was a group of about 15-16 people and they were linked to the Congress Party. The Tribunal asked the applicant to clarify his reference to other people 'being scared'. He stated they were trying to scare people who were working on his farm land and sending money to him. They were doing this because he was in the BJP and also because they wanted to get his property back. The Tribunal asked why they would do this if it was the applicant's property. He stated that if everyone in his family were 'deceased', the property would go to other relatives and these people might be able to get a share.
29. The Tribunal asked why the people would target the applicant after 2004. He stated that from this time he was in the BJP Party; he was a [Youth Official 1] and 'something like that' and was an active member involved in supporting the party and doing things like rallies.
30. The Tribunal asked when the applicant joined the BJP and he stated that although he did not remember the date he thought it was around January or March 2004. The Tribunal asked when he became a [Youth Official 1] and he stated it was at the same time, that is, from the time he joined, because he had worked for the Party from 18-19 and had a 'name' in the Party in 2004. Because of this recognition the Party told him he could be [Youth Official 1] straight away. The Tribunal indicated it was difficult to believe he would have been appointed a [Youth Official 1] immediately he joined the Party. He said he had worked for the party since he was 17, even though 18 was the voting age. He then stated he had worked for the Party since he was 14-15. The Tribunal indicated he had claimed he had joined the BJP in 2004 He

stated there was no formal appointment letter, and he had worked for the Party since his childhood. The Tribunal indicated that the applicant had not previously indicated in his application that he had worked for the Party from that age, and had only indicated he joined the Party in 2004. The Tribunal stated it was of concern that he now indicated he had worked for the party since he was 14, which in itself was an implausible claim. He stated he was put in the position because he was 'recognised'.

31. The Tribunal asked what procedure he followed to join the BJP. He stated one had to be active and work for the Party and do things like banners and posters and publicity, and one had to work at polling booths. The Tribunal asked again about the specific procedure he underwent in order to become a member of the BJP. He stated there was no procedure for joining, if one were an 'active member' one would be recognised, and one needed to be available when called to help the Party. The Tribunal indicated that the BJP constitution referred to very specific procedures to become a member of the Party, and raised its concerns that the applicant stated there was no procedure. He stated there was definitely no procedure.
32. The Tribunal asked what it was about the Party that attracted him to it, and he stated that his friend's father was active in the BJP; his name was [Mr A] and he was a 'chairman'. The applicant used to go to his house and [Mr A] encouraged him to get involved. The Tribunal asked again what it was about the Party that attracted him and made him decide to join. He stated he never considered anything else and just helped his friend's father who was like an uncle to him. One of the main things that attracted him was the way the BJP supported Hindus in the Babri Masjid matter. He stated that he remained [Youth Official 1] until 2009 and that in fact there still had not been a replacement in the position, though he thought his friend's father was thinking about a replacement.
33. The Tribunal asked about the applicant's role as [Youth Official 1] He stated that he and others used to get together to canvass for the Party. They used to approach people and tell them about the Party, including its agenda and what they were doing in the area, what development they proposed, and what they proposed for the next elections. The Tribunal asked which elections the applicant had been involved in. He stated he was involved in the 2004 elections, and also 2001 and 2002 municipal elections ([Municipality A]); his friend's father had stood for the chairman position in these elections. The applicant was also involved in 1996, sitting at polling booths and giving voters stickers and directing them to polling booths. The Tribunal asked how the Party had fared in the 2004 elections and he stated it had done poorly and only won 2 seats. The applicant also confirmed that he was involved in the 2009 elections. When asked how the Party fared then he stated it had failed, and only 1 seat was won in the whole of Andhra Pradesh, by Kishan Reddy.
34. The Tribunal asked the applicant to describe the philosophy of the BJP. The applicant stated it was 'good' The Tribunal asked again what the philosophy of the Party was and the applicant stated he did not know.
35. The Tribunal asked what other responsibilities the applicant had as [Youth Official 1] and he stated there was not much involved, just getting together with others to support the Party and organise rallies, especially if something 'goes wrong'. He said they encouraged the youth. The Tribunal asked the name of the youth arm of the Party and the applicant stated there was no different name, just the BJP The Tribunal asked the question again and he stated there was no name. The Tribunal stated there was a specific name. The applicant stated that maybe in other parties such as Congress there was a specific name. When the Tribunal asked again he hesitated and stated again it was the BJP. The applicant then asked if the Tribunal was asking

about the BJYM. The Tribunal stated it had asked about the youth arm and considered it was problematic that the applicant had struggled to identify the name of the youth arm of the Party.

36. The Tribunal asked who the head of the youth arm of the Party was and he stated it was Indrasena Reddy Nallu. The Tribunal asked the applicant to clarify what position he was stating Mr Reddy held. He stated he was a candidate for the MLA and had also run for MP. The Tribunal asked what position he held in the Party and the applicant stated he was President of the Party for Andhra Pradesh. The Tribunal indicated that he was not currently the State President though he had been in the past. The applicant then stated he thought the President was Chintalaram Chandara Reddy or perhaps Kishan Reddy. The Tribunal indicated it was of concern that the applicant was struggling to identify the State President given his claims of longer term involvement in the Party. The Tribunal also indicated it was a concern that the applicant had indicated there were no specific membership procedures, when the constitution outlined specific procedures, and that he had struggled to recall the name of the youth arm. The Tribunal also indicated it was a significant concern that when the Tribunal asked the applicant to describe the philosophy of the BJP, all he could say was that it was good. The Tribunal indicated that the applicant's difficulties and lack of knowledge appeared to be inconsistent with his claim to have been a [Youth Official 1] since 2004, and the Tribunal had concerns that the applicant had not been involved in the BJP as claimed. The Tribunal explained that this was potentially adverse to his claims, though the Tribunal had not yet made up its mind about the evidence.
37. He stated that he had been working for the BJP as a [Youth Official 1] in the [Suburb A] area. He stated the main thing was not that he knew everything. The Tribunal explained that when it asked who the leader or President of the youth arm was, the applicant had given the name of a past State President. He then gave a couple of other names in an uncertain manner, one of which was the State President. The Tribunal explained that the applicant had struggled to identify the youth arm of the Party. He stated that it was different when one lived in India. The Tribunal stated that the independent evidence indicated that the Party was highly structured, and not only the general party but also the youth arm had its own structure and leader. The applicant stated that perhaps he had forgotten things because he was stressed, and the main thing was not his knowledge but the fact that he had worked for the BJP. He stated that though there might be information about membership procedures it was not needed in practice. The Tribunal stated he had claimed to be a [Youth Official 1] and it was a concern that he lacked knowledge about important aspects of the Party such as its leaders, membership provisions and the philosophy of the BJP. The Tribunal explained it needed to assess the applicant's claims and he had claimed that he had been a [Youth Official 1] since 2004. The Tribunal considered it would be reasonable for him to be able to describe the philosophy of the BJP in greater detail than just saying it was good, and to be able to tell the Tribunal other details such as the name of the leader of the youth arm
38. The Tribunal also referred to the applicant's evidence of how many seats the BJP won in the 2004 and 2009 elections and indicated the BJP also won 2 seats in 2009. The Tribunal indicated the applicant's lack of knowledge of this did not appear to sit well with his claims of involvement in the Party and elections including those of 2009. The applicant then stated that his position was not that high. The Tribunal indicated that he had tried to establish a profile in the Party but now appeared to try to lower the profile, and it might conclude this was being done to overcome the concerns raised. He stated it was [Youth Official 1] for a zone, not the State.

39. The Tribunal asked which BJP district he belonged to. He was unsure of the question and stated it was under [Suburb B] council or constituency. The Tribunal explained that the BJP had a number of districts; he then stated it was [District 1].
40. The Tribunal asked about the attacks on the applicant. He stated that he was in a coma for a month after one of the attacks that occurred around July 2007. He did not see his attackers but 'village people' told him they were the people connected with his father's death. He had gone to the police but the police asked if he had seen his attackers, and because he had not, they did not pursue the case. The Tribunal asked if he had gone to the police with the additional information gained from the people from his village and he stated he had not. The Tribunal stated it was difficult to believe he would not have done so.
41. The applicant stated the other attacks occurred in 2005, 2006 and 2008. In 2005 he was attacked in [Suburb C], a part of Hyderabad. He was parking his bike when he was hit and had his nose broken. The people who hit him were people from his village. He went to the police about this, but nothing could be done. The Tribunal raised its concern that although he appeared to know who the attackers were, nothing could be done. He stated it was because the people from the village actually instigated other unknown persons to attack him, and the police always asked about the actual attackers.
42. The Tribunal also indicated it seemed difficult to accept that these attackers would not have been able to achieve their aim of killing the applicant given they seemed intent on doing so and had launched a number of attacks on him over a considerable period. He stated they would not have been able to kill him because the attacks took place in public places in Hyderabad, where there were many people, so they just injured him and let him go. He stated that there was no-one around when his father was killed, but there were 'too many' people around when he was attacked. The Tribunal indicated that if these attacks had indeed occurred, the police may not have been able to take action because of a lack of evidence, rather than a refusal to do so because of a Convention reason. He stated that when it came to a court matter or the response of the police then perhaps in reality it was not possible to progress the matters.
43. The Tribunal asked about the 2006 attack and he stated he could not recall exactly when it occurred, but he was just hit. This occurred in the [Suburb D] area. He knew who was behind the attacks but the people always used others to make it difficult for the police to take action. In 2008 he was attacked in September at a bus stand in [Suburb A]. It was late at night and he was somewhat drunk. He had gone to a paan shop at the bus stand and 2 people came with knives and stabbed him. People had seen it but no one was prepared to be a witness.
44. The Tribunal raised the issue that if there had been a pattern of attacks against him, why would the attacks have stopped after 2008. The Tribunal stated it had already referred to the problem of why the attackers had not achieved their aim of killing him, but this was an additional issue of concern. He said that in the past there had been people around but what would happen if an attack took place where there were no people around. The Tribunal stated the applicant had indicated he was living in Hyderabad, and it was difficult to believe that the attacks would have stopped after the last attack in 2008 if the people were so intent on killing him and there had been a history of attacks. He stated that perhaps they thought he would take revenge. He then stated he had always been lucky, though they did indeed want to kill him. The Tribunal indicated this made his evidence seem even less credible. The Tribunal indicated that in particular it was difficult to believe his attackers would just stop their attacks after 2008. The Tribunal outlined that it had concerns that the applicant had not given a

truthful account of his circumstances in India and the reasons he feared returning. The Tribunal indicated that even if it accepted he was a supporter of the BJP, it had doubts that he was involved in the BJP at the level claimed and that he had been attacked because of his involvement in the BJP. The Tribunal also indicated it had concerns about the evidence regarding the attacks by people connected with his father's death and their connection with Congress.

45. The Tribunal explained that it needed to outline its concerns so that the applicant could provide any further information in relation to the issues, and again explained that it had not yet made up its mind on the issues. The applicant indicated he had no further information to provide.

The Tribunal referred to the evidence that the applicant had submitted documents claiming employment at a firm [employer deleted: s.431(2)] for 8 years, and other documents relating to his finances, in order to obtain a business visa for Australia. He stated the claim and documents regarding employment were not true. A distant relative, actually not a blood relative, had arranged this document, though the other documents such as bank statements and income tax documents were genuine. He then stated the income tax file number was genuine. The Tribunal indicated that it might conclude that the applicant arranged to submit fraudulent documents regarding employment for reasons not connected with his protection claims, but because it facilitated the grant of a visa that he might otherwise have had difficulty in obtaining. He stated he did this to get a visa so that he could come to Australia and claim protection.

The Tribunal referred to the documents provided by the applicant, namely the BJP letterhead with his name and the letter regarding his appointment as [Youth Official 1]. The Tribunal asked about the signatory of the letter that he had been appointed [Youth Official 1]. The applicant stated it was his friend's father [Mr A], who was BJP Chairman until 2006/2007 of [Municipality A] The Tribunal raised the issue that the signature was under the title President, 'BJP Andhra Pradesh', which implied the signatory was BJP State President. The applicant stated he was authorised to sign on behalf of the State President in such a document. The Tribunal indicated it was of concern that no indication was given that he was signing on behalf of the State President, and had not identified his own position

The Tribunal indicated the main issue of concern was that the letter was signed in June 2003, before the time the applicant claimed he had become a member of and been appointed [Youth Official 1] in the BJP. The applicant indicated it might have been 2003 or 2004. The Tribunal explained that his evidence was specifically that he joined the BJP in January or March 2004 and became [Youth Official 1] straight away, whereas the letter was dated from 2003. The Tribunal indicated its concern that the letter and the blank letterhead did not reflect the applicant's true circumstances with respect to the Party and that they had been fabricated for the purposes of strengthening his refugee claims. The applicant had no comments to make on this issue.

Independent evidence

Bharatiya Janata Party (BJP)

46. The websites of the BJP (www.bjp.org) and the BJP in Andhra Pradesh (www.bjpap.in) contain information about the Party's history and philosophy, the Party's structure and constitution which includes membership rules, and details of past and present BJP leadership

at the national and Andhra Pradesh State level. The Party's Andhra Pradesh website also contains information about Party offices in the State. The youth arm of the BJP is the Bharatiya Janata Yuva Morcha (BJYM). It has its own website, www.bjym.org, which is largely in Hindi. Information from these websites indicates that the current National president of the BJP is Nitin Gadkari, and the current Andhra Pradesh BJP President is Kishan Reddy; the current national President of the BJYM is Amit Thaker and the Andhra Pradesh state President of the BJYM is Dr. Kasam Venketeswarulu.

Political violence in Andhra Pradesh

47. The independent evidence indicates there have been ongoing incidents of political violence in Andhra Pradesh involving the TDP and the Congress party in particular. The evidence indicates that members of both parties have been both victims and perpetrators of violence.
48. An October 2006 article by *The Times of India* provides an overview for the reasons behind the violence, with primary reference to the southern sections of Andhra Pradesh:

Before the advent of the Telugu Desam Party (TDP) in the early eighties, Congress leaders held the monopoly. But with the rise of the TDP, factional fighting polarised into two groups and, over the years, has grown into a fierce and bloody rivalry. "The political allegiance is only a cover up. The core issue is the control over contracts, the thriving liquor business and the crores of rupees that the government schemes bring with them," said a lawyer from the region.

The double murder case for which Gowru Venkata Reddy was convicted for life is typical of this rivalry. Apparently, sensing that his TDP rivals were planning to eliminate him, Venkata Reddy is believed to have struck first by eliminating E Ramasubbaiah and S Ambi Reddy of the rival party. Convicted for the twin murders, Venkata Reddy was awarded a 10-year sentence, which the current government pardoned on the grounds that the convict was a loyal and trusted worker of the Congress.

So far, those killed in such factional violence include a minister, a former MP, several MLAs, a public prosecutor, dozens of samiti presidents and sarpanches along with hundreds of ordinary party workers. According to an unofficial estimate, nearly 650 people were killed from the Congress side while 500 from the TDP met a similar fate. Historians trace the warlordism to the days of disintegration of the Vijaya Nagar empire which saw the rise of unruly local tax collectors.

... Liberalisation further widened their sphere of activity into highways and infrastructural projects and finally to real estate in the major metros in the state. Their dominance was such that no one outside can ever secure a project in the region. If they did manage to get so, they would be forced to sub-contract the projects to these factional leaders. With the Supreme Court quashing the pardon given to Congress leader Venkata Reddy, the Rayalaseema region and its cult of factional violence has once again snatched notorious national headlines (Nagaraju, J. 2006, "Volatile" Rayalaseema under spotlight again', *The Times of India*, 19 October)

FINDINGS AND REASONS

49. The Tribunal finds on the basis of the applicant's Indian passport which he provided at the Tribunal hearing that the applicant is a national of India, and has assessed his claims against that country.

50. The applicant has claimed that his father and uncle were killed in [year deleted: s.431(2)] when he was 3 because his father was active in the TDP. He claimed they were killed by political opponents from the Congress Party and that the persons responsible included distant relatives. The applicant claimed that from the time that he joined the BJP in 2004 he was also targeted by political opponents linked to the Congress Party who included persons that had been involved in his father's death. He claimed to have been targeted because of his involvement in the BJP, but also because of a perception on the part of persons involved in his father's death that he would pose a threat because he might seek revenge for his father's death.
51. The Tribunal considers the applicant's evidence regarding his membership of and activities in the BJP is highly problematic and is not consistent with his claim to have been an active member of the Party holding the position of [Youth Official 1] for the [Suburb A] zone (a suburban area of Hyderabad in Andhra Pradesh) since 2004. The Tribunal considers it is problematic that the applicant was unable to outline the process involved in becoming a member of the BJP, and indeed stated that there was no process and that one only had to actively assist the Party. The constitution of the Party is set out in the BJP's website and it contains detailed provisions and rules relating to becoming a member of the Party. The Tribunal considers it is not credible that a person holding the position of [Youth Official 1] at an area level since 2004 would not be aware of such provisions.
52. The Tribunal considers the applicant's evidence regarding the time from which he was actively involved in the BJP was inconsistent and lacking credibility. The applicant claimed that he was appointed [Youth Official 1] as soon as he joined the BJP in early 2004. When the Tribunal indicated its doubts that the applicant would have been appointed to the position immediately on joining the Party, he sought to indicate that he had been active in the Party for a number of years before that, and thus already had a profile or level of recognition within the Party. He stated at the hearing that he had worked for the Party since he was 18 or 19, but then stated he had worked for the Party since he was 17, even though the voting age was 18. After this the applicant also stated he had done work for the Party since he was 14-15. The Tribunal considers that the applicant's shifting account of when he started to work for the Party, and the fact that he had not mentioned in his written statement that he had a longer history of involvement in the Party than from 2004, raises serious doubts about whether he was actually involved in the Party as claimed and for the period claimed. The Tribunal considers his shifting account was an attempt to create a profile of longer involvement in the Party, in response to the Tribunal's query about why he would have been appointed a [Youth Official 1] immediately on joining the Party in 2004. Given his shifting account and that he had not previously identified this claimed longer history of involvement, the Tribunal has serious doubts that the applicant was in fact appointed [Youth Official 1] in the BJP from early 2004.
53. The Tribunal finds that the applicant struggled to identify the name of the youth arm of the BJP, the Bharatiya Janata Yuva Morcha (BJYM). When the Tribunal asked the applicant to give the name of the youth arm, he stated on a number of occasions that it was just named the BJP, and there was no other separately named youth arm. Indeed the Tribunal considers he sought to distinguish the BJP in this respect from other political parties such as the Congress Party. Although after a number of questions about this issue the applicant asked whether the Tribunal was referring to the BJYM, the Tribunal considers that the significant delay in identifying the name of the youth arm and his initial assertions that there was no separately named youth arm, demonstrates a significant lack of familiarity with important features of the

BJP's structure. The Tribunal finds this is not consistent with his claims to have been a [Youth Official 1] since 2004.

54. The Tribunal also finds that the applicant struggled to identify the leader or president of the youth arm, and his response to this question demonstrated a further degree of uncertainty about BJP leaders in his State which the Tribunal considers is also not consistent with his claim of having been a [Youth Official 1] in the Party since 2004. When the Tribunal asked about the leader of the youth arm, the applicant gave the name of a former BJP State President for Andhra Pradesh. The Tribunal considers its question clearly referred to the youth arm, as it immediately followed a discussion about the name of the youth arm. However, even if the Tribunal accepted the possibility that the applicant understood the Tribunal was asking about the Andhra Pradesh State President, the Tribunal considers the applicant's answers were very uncertain. The applicant had given the name of a past State President (Indrasena Reddy Nallu), and when the Tribunal indicated this, the applicant stated hesitantly that he thought the State President was Chintalaram Reddy or Kishan Reddy. While Kishan Reddy is the current State President of the BJP for Andhra Pradesh, the Tribunal has not been able to identify the name of Chintalaram Reddy amongst senior office bearers of the Party.
55. The national and Andhra Pradesh websites of the BJP establish that the Party is highly structured. Given this evidence the Tribunal considers the applicant's difficulty in naming the youth arm and its President, and his uncertainty when the Tribunal discussed the Andhra Pradesh State President, are adverse to his claims to be a [Youth Official 1] of the [Suburb A] area since 2004.
56. The Tribunal also considers it is highly adverse to the applicant's claims of involvement in the BJP as a [Youth Official 1] that he was unable to describe the BJP's philosophy when asked at the hearing. The BJP website contains a detailed description of the Party's very distinctive philosophy, based on concepts such as 'Integral Humanism' and 'Hindutva'. The Tribunal considers the applicant's response to the Tribunal's question on this issue, that the philosophy was 'good', displays a very significant lack of awareness of an important feature of the Party, and it is not credible that the applicant would not be able to provide details of the philosophy if he were involved in the party as claimed.
57. The Tribunal has considered the applicant's evidence that he may have forgotten some things because he was stressed. The Tribunal accepts that a hearing can be a stressful situation, but the Tribunal does not accept this explains the applicant's problematic evidence in relation to a number of different aspects of the BJP and his involvement in it. The Tribunal has also considered his claim that his focus was on actual work for the Party, rather than knowledge of matters and office bearers the Tribunal had asked about. The Tribunal does not accept this explanation, given the claim that he was [Youth Official 1] of an area of Hyderabad for a number of years, that is from 2004 until his departure for Australia. The Tribunal considers the applicant sought to reduce or lower the status or importance of the position of [Youth Official 1] when the Tribunal raised its concerns about his lack of knowledge. The Tribunal accepts that the applicant's claimed position is at a suburban area level, but considers the applicant had, prior to claiming the position was not that important, consistently sought to convey that he held a position which gave him a reasonable profile and distinguished him from a general supporter. In these circumstances the Tribunal considers his problematic evidence regarding the BJP and his involvement is highly adverse to his claims.

58. The Tribunal has considered the evidence submitted by the applicant of a blank BJP Hyderabad letterhead showing his name and title of [Youth Official 1] (together with the names of 2 other office holders), and a letter also on BJP letterhead signed by a [Mr A], stating that the applicant was appointed [Youth Official 1] for the [Suburb A] zone. The Tribunal considers the letter from [Mr A] in particular is highly problematic, in terms of supporting evidence, as it is dated [in] June 2003, whereas the applicant has consistently claimed that he was appointed [Youth Official 1] immediately on joining the Party in January or March 2004. When the Tribunal raised its concern on this issue the applicant responded merely that he thought it was 2003 or 2004. The Tribunal does not accept that this adequately explains the discrepancy, given his previous consistent claims that he joined the Party in early 2004. The Tribunal considers in addition that it is problematic that the letter from [Mr A] indicates the title of the signatory as President, BJP Andhra Pradesh, whereas the applicant stated that [Mr A] was his friend's father who was a Chairman of the Party in [Municipality A]. The Tribunal does not accept the applicant's explanation that [Mr A] was able to sign on behalf of the State President; the Tribunal considers in the circumstances of the highly structured nature of the BJP that if this were the case, then [Mr A] would have identified that he was signing on behalf of the State President, and/or would have identified his own position in the Party.
59. The Tribunal therefore finds that the letter signed by [Mr A], and the blank letterhead with the applicant's name and title, do not reflect the applicant's true circumstances, and that they have been obtained or put together for the purposes of boosting the applicant's claim to have had a profile with the BJP as [Youth Official 1] of the [Suburb A] area in Hyderabad. The Tribunal also considers that the provision of these documents which the Tribunal has found deficient reflects adversely on the applicant's credibility generally.

Given the adverse findings above the Tribunal is not satisfied that the applicant was involved in the BJP at the level claimed. The Tribunal considers the findings are adverse to the applicant's claims of being targeted by political opponents because he has sought to establish that his own formal involvement in the BJP acted as an impetus for political opponents from or associated with the Congress Party to attack him.

The Tribunal also considers that the applicant's evidence of the circumstances of being targeted and attacked in the years from 2004 lacks credibility. The applicant described being attacked on 4 occasions, in 2005, 2006, 2007 and 2008. Although he claimed that his attackers were intent on killing him, that they constituted a group of some 15-16 persons, and that one of the attacks left him in a coma for a month, he was unable to give a credible explanation for why they had not been able to achieve their aim over such a considerable period. The Tribunal does not accept as credible the applicant's explanation that he was 'lucky'. The Tribunal also considers the other explanation that the attacks occurred in public in a congested and populous city is not credible. The Tribunal also considers his account of the attacks occurring only on an annual basis is also not credible given his claim that his opponents were intent on killing him. For the same reasons, the Tribunal considers it is not credible that his opponents, being intent on killing him, would just stop their attacks against him after the last attack in 2008. The Tribunal considers that the problematic nature of the applicant's evidence about the attacks on him raises very serious doubts about whether they actually occurred.

Having regard to the above, the Tribunal finds that the applicant is not a witness of truth and has not given a truthful account of his circumstances in India, the harm he claims to have experienced in the past, the reasons he left India and the reasons he fears returning.

60. The Tribunal therefore does not accept that the applicant was involved in the BJP at the level of [Youth Official 1] in the [Suburb A] area of Hyderabad from 2004 as claimed, or that he did work for the BJP for a number of years before that, including since he was a teenager of 14-15. The Tribunal accepts that the applicant may have been a supporter of the BJP when he resided in India. The Tribunal does not accept, however, that the applicant had any involvement in the BJP such that it became an impetus for political opponents, including persons from the Congress Party, to adversely target and attack him.
61. The Tribunal accepts, on the basis of the death certificate submitted by the applicant, that his father died in [year deleted: s.431(2)]. The Tribunal does not accept, however, given the adverse credibility findings above, that the applicant's father and uncle were killed as a result of political violence by opponents from the Congress party, which may have included distant relatives, on account of their involvement with the Telugu Desam Party. The Tribunal thus does not accept that the applicant's father's death was an impetus for him to be targeted by political opponents either on the basis of his own involvement in the BJP, or on account of a perception that he might seek revenge for his father's death. The Tribunal therefore does not accept that the applicant was attacked on an annual basis in the period 2005 to 2008 on account of his political activities or for any reason associated with his father's death in [year deleted: s.431(2)]
62. The Tribunal therefore does not accept that the applicant has experienced serious harm in India amounting to persecution on account of his political opinion (involvement in the BJP) or for any other UN Convention reason.
63. The Tribunal does not accept that the documents submitted by the applicant to the Australian authorities in relation to his business visa application, which the applicant has indicated included non-genuine documentation in respect of his employment, are connected in any way with his claims of past harm experienced in India and his fears of returning. These documents are not in any case considered to be a reason or part of the reason for the Tribunal's decision.
64. The Tribunal accepts that if the applicant returns to India he may continue to be a supporter of the BJP. However given the findings above regarding the applicant's claims of involvement in the BJP, the past harm he claimed to have experienced, and the circumstances of his father's death, the Tribunal does not accept that any continued support for the BJP on the applicant's part will give rise to any real chance that he will be adversely targeted by any political opponents or any individuals acting on their behalf if he returns to India. The Tribunal therefore does not accept that there is any real chance that the applicant will experience serious harm amounting to persecution as a result of his general support for the BJP if he returns to India. Neither does the Tribunal accept that there is any real chance that the applicant will experience serious harm amounting to persecution for any reason connected with his father's death if he returns to India. The Tribunal therefore does not accept the applicant has a well founded fear of being persecuted on account of his political opinion or any other Convention reason if he returns to India now or in the foreseeable future.

CONCLUSIONS

65. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

66. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer: PRMHSE